

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

HOWMET AEROSPACE INC., a Delaware
Corporation

Case No. 1:22-cv-00713

Plaintiff,

Hon. Hala Y. Jarbou

v.

JOHN CORRIGAN, an individual, NICHOLAS
G. LIRONES, an individual, and the ESTATE
OF RONALD WARD

Defendants.

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**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR JUDGMENT ON THE PLEADINGS**

ARGUMENT

On November 14, 2022, Howmet filed a motion to dismiss Defendants' counterclaims, under Fed. R. Civ. P. 12(b)(6), because each claim is preempted by ERISA. (ECF No. 16). On January 6, 2023, Howmet filed a motion for judgment on the pleadings, under Fed. R. Civ. P. 12(c), requesting that the Court grant the relief requested in Howmet's declaratory judgment complaint because Defendants admitted that they received their account balances and that they were no longer "Participants" in the deferred compensation plan. (ECF No. 33). Pursuant

to W.D. Mich. LCivR 7.2(c), Defendants' response to Howmet's Rule 12(c) motion was due 28 days after it was filed, or February 3, 2023.

On January 6, 2023, Defendants filed a non-substantive response to the Rule 12(b)(6) motion generally requesting an extension of time to respond to that motion and specifically asking "that such a response be deemed as due on the same date as Plaintiff's Motion on the Pleadings." (ECF No. 36, PageID.280).

As of the date of this filing, Defendants have not substantively responded to either Howmet's Rule 12(b)(6) motion on Defendants' counterclaims or Howmet's Rule 12(c) motion on Howmet's Complaint. Accordingly, because Defendants failed to substantively respond to either motion in accordance with the applicable Local Rules, this Court is empowered to treat Howmet's motions as unopposed and grant the relief requested in each motion. See *Humphrey v. U.S. Att'y Gen.'s Off.*, 279 F. App'x 328, 331 (6th Cir. 2008) ("Thus, where, as here, plaintiff has not raised arguments in the district court by virtue of his failure to oppose defendants' motions to dismiss, the arguments have been waived."); *Scott v. State of Tenn.*, 878 F.2d 382 (Table), 1989 WL 72470 *2 (6th Cir. 1989) ("Because the plaintiff failed to make a timely response to defendants' motion, the district court properly deemed the plaintiff to have waived his objections and found the defendants' motion to be meritorious."); *Woods v. Demmer Corp.*, No. 1:09-CV-625, 2010 WL 5147364 *4 (W.D. Mich. Nov. 18, 2010), report and recommendation adopted, No. 1:09CV625, 2010 WL 5146569 (W.D. Mich. Dec. 13, 2010) ("Plaintiff's failure to file a response is a violation of the local court rules and tantamount to a waiver of opposition to defendant's motion.")

CONCLUSION

For these reasons, Howmet respectfully requests that the Court: (1) grant Howmet's Rule 12(b)(6) motion and dismiss Defendants' counterclaims with prejudice; (2) grant Howmet's

Rule 12(c) motion for judgment on the pleadings; and (3) enter a final judgment declaring that Howmet properly and completely terminated the Plan in 2020, Howmet discharged all of its obligations under the Plan, Section 7.3 does not survive Howmet's termination of the Plan, and Defendants and their beneficiaries are not entitled to any future benefits from the Plan.

MILLER JOHNSON,
Attorneys for Plaintiff

Dated: February 7, 2023

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Certificate of Compliance

1. This brief complies with the type-volume limitation of W.D. Mich. LCivR 7.2(b)(i) because this brief contains 453 words, excluding the parts of the brief exempted by W.D. Mich. LCivR 7.2(b)(i).

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MILLER JOHNSON,
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Dated: February 7, 2023

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